

Holme Roberts & Owen LLP



January 28, 2002

SENT VIA:

E-MAIL TO: Microsoft.atr@usdoj.gov

☒ VIA FACSIMILE COPY TO: (202) 307-1454 or (202) 616-9937☐ 1ST CLASS MAIL TO:

The Honorable Colleen Kollar-Kotelly
U.S. District Court, District of Columbia

c/o Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW, Suite 1200
Washington, D.C. 20530-0001

Paul F. Moatley
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Re: Microsoft Settlement

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Dear Judge Kollar-Kotelly:

My comments are made with regard to the proposed settlement in the *Microsoft v. DOJ* case.

I believe it would be improper to allow Microsoft to enter a settlement agreement that does not guarantee that future antitrust violations will be prevented. Microsoft has been adjudged to have violated antitrust laws. Its conduct was so pervasive that the original trial court judge determined that break-up was the only remedy. That decision, but not the decision that Microsoft violated antitrust laws, was reversed on appeal to the Court of Appeals. The case is now back before a new trial court judge following the U.S. Supreme Court's decision not to review the case. The purpose of the remand is to determine the proper sanctions to penalize Microsoft for past conduct and to prevent future violations.

This determination should be made by the court and not by the parties. I am informed that the proposed agreement contains critical provisions that do not go far enough or that place too much discretion into Microsoft's hands. Failure to impose proper and adequate sanctions will set an unfortunate precedent for future antitrust cases and will do little to resolve the issues in the Microsoft litigation.

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January 25, 2002
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The court should resist the urge to adopt a settlement and hold hearings to make a proper determination.

Respectfully,

Paul T Moxley by ae

Paul T. Moxley

cc: The Honorable Mark Shurtleff, Utah Attorney General